



23<sup>rd</sup> March 2011

Dear Complainant,

**Complaint against the Financial Services Authority**  
**Reference Number: GE-L01231**

I refer to your email of 24<sup>th</sup> January 2011 in connection with the above. I am now writing to advise you that I have now completed my investigation into your complaint.

At this stage, I think it would be worth explaining my role and powers. I am charged, under Paragraph 7 of Schedule 1 of the Financial Services and Markets Act 2000 (the Act), with the task of investigating those complaints made about the way the FSA has itself carried out its own investigation of a complaint. The investigations I undertake are conducted under the rules of the Complaints Scheme (Complaints against the FSA - known as COAF). I have no power to enforce any decision or action upon the FSA. My power is limited to setting out my position on a complaint based on its merits and then, if I deem it necessary, I can make recommendations to the FSA. Such recommendations are not binding on the FSA and the FSA is at liberty not to accept them. Full details of Complaint Scheme can be found on the internet at the following website; <http://fsahandbook.info/FSA/html/handbook/COAF>.

**Your Complaint**

From your correspondence with my office, I understand your complaint relates to the following issues:

You have incurred a £250 administration fee for the late submission of the RMA-J (Part-J) of your GABRIEL return which was due to be submitted by 11<sup>th</sup> August 2010 but was not actually submitted until 26<sup>th</sup> August 2010.

You feel that the FSA's should waive the administration fee it has applied as you say that you submitted your GABRIEL return (with the exception of RMA-J) on 3<sup>rd</sup> August 2011 which was before the due date.

You are also unhappy with the amount of the administration charge the FSA charge for the late submission of a required report and feel that a flat penalty of £250 is unfair on firms who occasionally make an error and miss a reporting deadline.

**My Position**

As part of my investigation into your concerns I have obtained and reviewed the FSA's investigation file. I have considered the comments you have made when corresponding with both the FSA and my office. I have also referred to the FSA's handbook which sets out the requirements it imposes on individuals and firms who wish to be authorised.

Before I comment further on your complaint I must make you aware that I have previously made a general comment about the way in which I view complaints relating to the return of reports by the industry to the FSA on my website under the heading of "Views of the Commissioner" (<http://www.fsc.gov.uk/documents/recent-issues-feb08.pdf>). As part of becoming authorised under the FSA you accepted to be bound by its rules. I note that I have not seen any evidence of your firm challenging the effect of the rules surrounding the requirement for electronic submission prior to the date which the regulatory return was due. This is clearly explained in the FSA handbook which sets out the rules with regard to regulatory returns, which you have previously agreed to comply with as part of the authorisation process.

The FSA's records show that your firm, Firm A first became authorised by the FSA on 18<sup>th</sup> August 2005. From your correspondence with the FSA I also believe that you had previously submitted a number of returns and therefore would have been aware that your firm was required to complete subsequent returns at regular intervals.

From the papers presented to me by the FSA it is clear that the FSA sent a reminder to your firm on 1<sup>st</sup> July 2010 confirming that Firm A's reporting period had ended. This email also confirmed the data items (or returns) which were due to be submitted by 11<sup>th</sup> August 2010. I understand that the list included the RMA-J report. The FSA issued a further reminder to you on 30<sup>th</sup> July 2010 which again included a full list of the reports which you needed to submit before 11<sup>th</sup> August 2010.

Following this email it is accepted by the FSA that Firm A submitted all of the required reports, with the exception of the RMA-J, on 3<sup>rd</sup> August 2010. Later that day I understand that the FSA issued you with a further reminder which indicated that:

*"If you have received this email but have already submitted one or more of the data items, please log into GABRIEL and check your reporting schedule to ensure that all of the data items in the return have a completion status of 'Submitted'. For example if you are required to submit the half yearly RMAR data items you will notice that section J of the RMAR (calculation of the fee tariff data) will appear as a separate data item on your reporting schedule - which will also have the same due date as the RMAR."*

Additionally, on 6<sup>th</sup> August 2010 the FSA issued you with a final reminder that, although you had submitted a number of your returns, your firm's RMA-J return was still outstanding and needed to be submitted by 11<sup>th</sup> August 2010.

The £250 administration fee you have incurred relates to the late submission of Part-J of your GABRIEL return for the period ending on 30<sup>th</sup> June 2010. Although the return was due by the 11<sup>th</sup> August 2010 it was not submitted until 26<sup>th</sup> August 2010, some 15 days late, which I understand was submitted after you received a Fee Notification email informing you that, as your RMA-J return had not been submitted before the deadline of 11<sup>th</sup> August 2010 you were now liable for the late submission administration fee of £250.00.

As I have explained above, I do sympathise with your position as it is clear that Firm A incurred an administration charge despite attempting to fulfil its requirements under the Act. However, I also have to be mindful of both your and the FSA's action after you attempted to submit the returns.

In this case the FSA has confirmed that it wrote to you, by email on 1<sup>st</sup> July and 30<sup>th</sup> July 2010 notifying you that your GABRIEL returns needed to be submitted by 11<sup>th</sup> August 2010 and in doing so setting out which returns needed to be completed. I also appreciate that whilst you submit all of your returns (with the exception of the RMA-J) on 3<sup>rd</sup> August 2010, the FSA notified you later that day that Part-J of the return had not been submitted and remained outstanding. Despite this email, and a subsequent reminder sent by the FSA on 6<sup>th</sup> August 2010 reiterating that the RMA-J return remained outstanding, the FSA's file shows no evidence of any subsequent contact between you and it in relation to this matter.

As I have mentioned above, although it is clear, in my opinion, that the emails should have prompted you to take some action, there is nothing to indicate that you did so. I have noted that you indicated that you did not receive any of the emails indicating that the RMA-J return remained outstanding. As I am sure you will appreciate, it is difficult for me to comment on situations like this as the FSA's records indicate that a reminder was sent. I understand that you state that you did not receive the emails but it does appear that the emails were all sent to the same email address. On the balance of probabilities therefore I must make the reasonable assumption that the emails arrived. In arriving at this decision, as I have indicated previously, firms are expected to be aware of their reporting requirements. Therefore, I believe that it would have been reasonable for you to be aware in any event what returns you were due to submit and when. Likewise, as the FSA provided you with details of what returns were required on two occasions before (my emphasis) the due date (and when you submitted part of your GABRIEL return), in my opinion, it would have been clear that you were required to submit your half yearly RMA-J return in addition to the other quarterly returns which were due in August 2010.

I also note that you are unhappy with the size of the administration fee. The administration fee of £250 imposed by the FSA is a standard fee applied in all cases of late submission and does not reflect the details contained in any part of the GABRIEL return.

As the FSA explained in its decision letter of 13<sup>th</sup> January 2011, the amount of the administrative fee is intended to recover the costs that the FSA incurs, as an end-to-end process, in pursuing firms with overdue returns. It is intended to be separate to the FSA's Enforcement powers and is not therefore a financial penalty. The late payment charge for the FSA, Financial Ombudsman Service and Financial Services Compensation Scheme were all aligned to £250. This was consulted publicly in CP05/2 and approved by the FSA Board in March 2005. An administrative charge for the late payment of FSA fees has been in existence since N2 (November 2001 - when the main provisions of the Act came into force) and continues the process operated prior to N2 by the Personal Investment Authority.

The Act requires the FSA to have regard to the need to use its resources in the most efficient and effective way. The simplicity of having the same charge, whether a firm pays late or submits returns late means it is easier for firms to understand, and is more efficient and therefore cost effective for the FSA to administer data collection and fee payment. This is explained in the compatibility statement to CP05/2. I have noted your comments about this issue, but, in my opinion, as the issue was the subject of consultation with the industry, there is nothing further I can add.

Details of the penalties and administration charges applied for the late submission of a return can be found in the FSA rule book under SUP 16.3.14.

### **SUP 16.3.14 states**

If a *firm* does not submit a complete report by the date on which it is due in accordance with the *rules* in, or referred to in, this chapter or the provisions of relevant legislation and any prescribed submission procedures, the *firm* must pay an administrative fee of £250.

In this case, as your submission was received by the FSA some time after it was due, the FSA is following the rules laid down in its rule book by imposing a £250 administration fee on your firm. The onus for compliance with all of the FSA's rules (including the timely submission of reports required by it) falls upon those who are authorised. This responsibility is accepted as part of the authorisation process by the firm applying for authorisation. The rules on regulatory returns are clear and straightforward to find in the FSA handbook. By imposing the administration fee following the late submission of your GABRIEL return, the FSA has followed its stated procedures on the matter.

Whilst I am mindful that you attempted to submit the returns in a timely manner, the facts are that, in my opinion, you omitted, for whatever reason, to submit all of the required returns. Ultimately, as you did not submit Part-J of your GABRIEL by the due date, you have not complied with the FSA's rules. By imposing the administration fee (which is detailed in its hand book under SUP 16.3.14) the FSA has followed its stated procedures on the matter.

### **Conclusion**

In assessing a complaint, I have to have regard to the FSA's investigations and findings, together with the further representations complainants make to my office. In this instance, you have not explained why you feel that the decision the FSA made was incorrect, only that you are unhappy with it. I accept that you submit most of the required returns before their due date but ultimately, you omitted to submit the RMA-J return before the due date. The FSA made you aware before on two occasions (before the due date) that Part-J needed to be included within the returns.

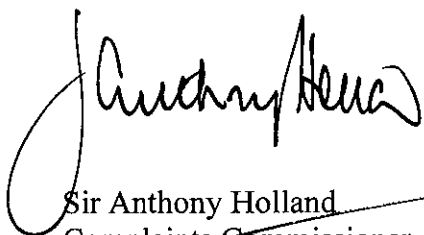
Likewise, the FSA also appears to have sent you two further emails (on 3<sup>rd</sup> and 6<sup>th</sup> August 2010 both of which were before the due date) to indicate that the RMA-J was outstanding and still needed to be submitted. I appreciate that you say that you did not receive the FSA's reminder emails but, whilst I cannot easily comment on the reasons for this, the fact remains that you should have been aware of your reporting requirements and the FSA clearly set out what returns were required when it emailed you on 1<sup>st</sup> and 30<sup>th</sup> July 2010.

I would also add that I have not considered your concerns about the FSA's decision to apply for and to collect the £250 administration fee through a direct debit arrangement. Although you raised this with my office, the FSA informed me that this issue was omitted from its investigation. I understand that the FSA has now considered this element of your complaint and as a result has arranged for the payment of £250, which it took by direct debit whilst your complaint was being considered, to be refunded to you.

I am sorry, but from the papers presented to me I am unable to find any evidence to show that the FSA has not correctly dealt with your complaint. I am therefore unable to alter the decision previously made by the FSA. I appreciate that you will be disappointed with my findings, but hope that you will understand why I have arrived at this decision.

I would also point out that, as consequence of my decision the £250 administration charge (which the FSA has recently returned to you as a result of your complaint about this being taken by direct debit) is now payable in full and you should contact the FSA to arrange for the payment of this administration fee to be made.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Anthony Holland', written in a cursive style.

Sir Anthony Holland  
Complaints Commissioner